

March 15 (5) *270*
Wm. H. ...
Chas. ...
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 222 *7*

**THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR**

VS.

**THE NATIONAL EXCHANGE BANK OF BALTIMORE,
MARYLAND**

**IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Chas. ...
Of New York
Charles ...
only 3 ...
Chas. ...
FILED DECEMBER 11, 1925

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 766

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR

vs.

THE NATIONAL EXCHANGE BANK OF BALTIMORE,
MARYLAND

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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TRANSCRIPT OF RECORD

UNITED STATES OF AMERICA,
DISTRICT OF MARYLAND, to-wit:

At a District Court of the United States for the District of Maryland, begun and held at the City of Baltimore, on the first Tuesday in September (being the 4th day of the same month) in the year of our Lord one thousand nine hundred and twenty-three.

Present: The Honorable Morris A. Soper, Judge Maryland District, Amos W. W. Woodcock, Esq., Attorney; George W. Collier, Esq., Marshal; Arthur L. Spamer, Clerk.

Among other were the following proceedings, to-wit:

United States of America	}	No. 1501 Law.
vs.		
The National Exchange Bank of Baltimore, Maryland, a corporation.		

DECLARATION.

(2) Filed 22nd March, 1923.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND.

The United States of America
versus
The National Exchange Bank of Baltimore, Maryland, a Corporation.

The plaintiff, the United States of America, by A. W. W. Woodcock, United States Attorney, sues the defendant, the National Exchange Bank of Baltimore, Maryland, a corporation, under the laws of the United States of America.

For that on June 1st, 1922, at Washington, D. C., William H. Holmes, Disbursing Clerk, through C. M. Graney, Deputy Disbursing Clerk, Symbol 11348, drew and issued United States Veterans Bureau Check, No. 48,218,587, upon the Treasurer of the United States, the plaintiff, in favor of Joe Clenton Beck, as payee, for the sum of forty-seven dollars and fifty cents.

And for that the said check was changed *after issue* as aforesaid and delivery to the said Joe Clenton Beck, by some one unknown to the plaintiff, so as to read or call for the payment of the sum of forty-seven hundred and fifty dollars instead of forty-seven dollars and fifty cents, as drawn and issued.

And for that the said Joe Clenton Beck on or about June 3, 1922, endorsed, for value the said check to, and received from, the Bank of Commerce, Spartanburg, South Carolina, therefore the sum of forty-seven hundred and fifty dollars for which said amount the said check had been altered as aforesaid to call;

And for that the said Bank of Commerce, Spartanburg, South Carolina, thereafter endorsed the said check in substance as follows: "Pay to the order of Any Bank, Banker, or Trust Company. All prior endorsements guaranteed, June 3, 1922, Bank of Commerce, Spartanburg, S. C." and negotiated the said check for value in the usual course of business, to, and received therefor, from, the defendant, the sum of forty-seven hundred and fifty dollars, for which said amount the said check had been altered as aforesaid to call;

(3) And for that the defendant endorsed the said check, in substance, as follows: "Received Payment Through the Baltimore Clearing House, Endorsements Guaranteed, June 5th, 1922, National Exchange Bank, Baltimore, Joseph W. Leffler, Cashier", and negotiated the said check for value in the usual course of business, to, and received therefore from, the Baltimore Branch of the Federal Reserve Bank of Richmond, the agent of the plaintiff, the sum of forty-seven hundred and fifty dollars, for which said amount the said check had been altered as aforesaid to call; the said Baltimore Branch of the Federal Reserve Bank of Richmond not having notice that the said check had been raised as aforesaid;

And for that the said Baltimore Branch of the Federal Reserve Bank of Richmond, the agent of the plain-

tiff, as aforesaid, forwarded the said check to the Treasurer of the United States, the plaintiff, on or about June 5th, 1922, and was given credit by the plaintiff therefor for the said sum of forty-seven hundred and fifty dollars, as aforesaid, although the said check as issued called for the payment of only forty-seven dollars and fifty cents, as aforesaid, the plaintiff not having notice that the said check had been raised as aforesaid;

And for that the defendant, or anyone for it, or any other endorser upon the said check, has never paid the plaintiff the difference between the sum for which the said check was altered to call, as aforesaid, and the sum for which it was drawn and issued, though demand has been duly made upon the defendant so to do.

And the plaintiff claims Five Thousand Dollars (\$5,000.00) damages.

A. W. W. WOODCOCK,
United States Attorney,
Attorney for Plaintiff.

To the Defendant, the National Exchange Bank of Baltimore, Maryland:

Take notice that on the date of your appearance to this action a rule will be laid requiring you to plead to the foregoing declaration within the time provided by law.

A. W. W. WOODCOCK,
United States Attorney,
Attorney for Plaintiff.

WRIT OF SUMMONS AND MARSHAL'S RETURN.

(4) Issued 22nd March, 1923.

THE UNITED STATES OF AMERICA,

District of Maryland, to-wit:

The President of the United States of America to the Marshal for the Maryland District, Greeting:

We command you that you summon the National Ex-

change Bank of Baltimore, Maryland, a corporation, if it be found in your district, to appear before the Judge of the District Court of the United States for the District of Maryland, at the United States Court Room in the City of Baltimore, on the first Tuesday of April, next, to answer unto the action of the United States of America and how you shall execute this precept you make known to us in our District Court for the District aforesaid, and have you then and there this writ.

Witness the Honorable Morris A. Soper, Judge of our said District Court, this 22nd day of March, in the year of our Lord one thousand nine hundred and twenty-three. Issued 22nd day of March, 1923.

(Seal)

ARTHUR L. SPAMER, Clerk.

MARSHAL'S RETURN ON THE ABOVE SUMMONS.

"Summoned the National Exchange Bank of Baltimore Maryland, by service on Charles O. Kieffner, its Assistant Cashier, and copy of Writ, and copy of Declaration, & notice left with him this 23rd day of March, 1923.

WM. W. STOCKHAM,
United States Marshal.
By ALBERT E. TAYLOR,
Deputy.'

DEMURRER TO DECLARATION.

(5)

Filed 28th April, 1923.

And the Defendant, The National Exchange Bank of Baltimore, Maryland, by Baldwin & Sappington, its Attorneys, demurs to the Declaration of the Plaintiff, and for cause of demurrer, says:

I

That said Declaration does not state a cause of action against this Defendant upon which the Plaintiff can recover.

II.

That said Declaration does not state facts sufficient to constitute a cause of action against this Defendant.

III.

That it appears from said Declaration that the Defendant was a "collecting" bank, holding the check mentioned in the Declaration for collection only, and that the proceeds thereof were paid to the bank sending said check to the Defendant, but it does not appear from said Declaration that the Plaintiff made demand on the Defendant for the return of the money paid on said check, *before* it was so remitted by the Defendant to its correspondent; and the Plaintiff cannot recover against the Defendant in this action, unless the Plaintiff did make such demand *before* it remitted the proceeds to its principal.

IV.

(6) That it appears from said Declaration that the Defendant was a collecting bank, holding the check mentioned in the Declaration for collection only; and therefore the Plaintiff cannot recover against the Defendant in this action.

V.

That it appears from said Declaration that the Plaintiff was both the drawer and drawee of the check mentioned in said Declaration, that said check was "raised" before coming into the hands of the Defendant, which had no knowledge of that fact and which paid out the proceeds thereof, and that the Defendant paid the said check upon presentation; and therefore, as the Plaintiff was both the drawer and drawee of said check, and as one of the parties must suffer, both of whom have equal equities, the legal title will prevail, and this action will not lie against the Defendant.

BALDWIN & SAPPINGTON,
Attorneys for Defendant.

ORDER OF COURT SUSTAINING DEMURRER TO DECLARATION.

(7) Filed 26th June, 1923.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF MARYLAND.

United States of America

vs.

The National Exchange Bank.

The demurrer to the declaration in the above entitled case coming on to be heard, and being submitted on argument of counsel, it is by the United States District Court for the District of Maryland this 22nd day of June, 1923.

Ordered, Adjudged and Decreed that the demurrer to the declaration filed herein be and it is hereby sustained.

MORRIS A. SOPER,
U. S. District Judge.

ORDER OF COURT DIRECTING CLERK TO ENTER JUDGMENT.

(8) Filed 3rd December, 1923.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND.

United States of America

versus

National Exchange Bank of Baltimore, Maryland.

The Plaintiff declining to amend the declaration and electing to stand upon the ruling of the Court on the demurrer, it is by the Court ordered this 3rd day of December, nineteen hundred and twenty-three, that the Clerk of this Court enter judgment for the defendant, with costs to the Defendant.

MORRIS A. SOPER,
United States District Judge.

MEMORANDUM OF THE CLERK: Judgment was accorded on the 3rd day of December, 1923, entered by the Clerk for the Defendant with costs to the defendant.

JUDGMENT.

Therefore it is considered by the Court here that the said defendant recover against the said plaintiff the sum of Ten Dollars and Ninety cents, adjudged by the Court here unto the said defendant for its costs and charges about its suit in its behalf expended, and the (9) plaintiff in mercy, etc.

DOCKET ENTRIES.

1923

Mch. 22 Declaration and Notice to plead, filed.

“ “ Summons issued retble. 1st Tuesday in April next. Copy declaration & notice and copy writ sent to be served.

(Summoned the National Exchange Bank of Baltimore, Maryland, by service on Charles O. Kieffner, its Assistant Cashier, and copy of Declaration & notice left with him this 23rd day of March, 1923.)

Apr. 28. Demurrer filed (service admitted).

“ “ Petition of Defendant for extension of time for filing pleas and order of court extending the time for filing pleas herein until fifteen days after the ruling of the Court on the the demurrer herein filed.

June 26 Order of Court dated 22nd June, 1923, sustaining the demurrer to the declaration herein filed.

Decr. 3 Order of Court directing judgment to be entered filed.

- “ “ Judgment for the Defendant with costs to the Defendant.
- “ “ Petition of the Plaintiff for the allowance of a writ of error to the U. S. Cir. Ct. of Appeals for the Fourth Circuit and Order of Court granting the petition and directing writ of error to issue, filed.
- “ “ Assignment of errors, filed.
- “ “ Stipulation of counsel as to making up transcript of record, filed.
- “ “ Writ of error issued. Copy filed.
- “ “ Citation issued retble. 11th January next (Service admitted).

ASSIGNMENT OF ERRORS.

(10) Filed 3rd December, 1923.

Now comes the United States of America, the Plaintiff in the above entitled cause, and files the following assignment of errors, upon which it will rely upon its prosecution of the Writ of Error allowed in the above entitled cause ordered by this Honorable Court on the 3rd day of December, nineteen hundred and twenty-three.

1. That the District Court erred in sustaining the demurrer filed by the Defendant on 28th April, 1923, to the declaration of the Plaintiff.

2. That the District Court erred in entered the final judgment against the Plaintiff.

A. W. W. WOODCOCK,
United States Attorney,
Attorney for the Plaintiff.

STIPULATION OF COUNSEL AS TO MAKING UP TRANSCRIPT OF RECORD.

(11) Filed 3rd December, 1923.

It is stipulated and agreed by and between counsel for the respective parties in the above entitled cause that the transcript of the record in the Plaintiff's appeal by Writ of Error to the United States Circuit Court of Appeals for the Fourth Circuit, shall consist of the following:

1. Declaration.
2. Writ of Summons and Marshal's return.
3. Demurrer to the Declaration.
4. Order of Court sustaining the demurrer.
5. Order for judgment.
8. Petition for writ of error and order allowing the writ.
7. Assignment of Error.
8. Citation.
9. Stipulation as to making up the record.
10. The Docket Entries in the case.

A. W. W. WOODCOCK,
United States Attorney,
Attorney for the Plaintiff.
BALDWIN & SAPPINGTON,
Attorney for the Defendant.

MEMORANDUM OF THE CLERK.

(12) 1. Petition for Writ of Error, filed 3rd December, 1923.

2. Writ of Error granted, 3rd December, 1923.

3. Citation, Dated 3rd December, 1923.

Acknowledgment of Service dated 27th December, 1923.

ORDER TO TRANSMIT RECORD.

And, thereupon, it is ordered by the Court here that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Fourth Circuit, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPAMER, Clerk.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

(13) District of Maryland, to-wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties, filed in said cause.

In Testimony Whereof, I hereunto set my hand and affix the seal of the said District Court this 10th day of January, 1924.

(Seal of Court)

ARTHUR L. SPAMER, Clerk.

1a [Caption omitted.]

11 In United States Circuit Court of Appeals

Docket entries

On the same day, to wit, January 11, 1924, the original petition for writ of error, order allowing writ of error, writ of error, and citation are certified up under sec. 7 of rule 14.

Same day, the appearance of A. W. W. Woodcock is entered for the plaintiff in error.

January 14, 1924, the appearance of Charles G. Baldwin and G. Ridgely Sappington is entered for the defendant in error.

February 23, 1924, twenty-five copies of the printed record are filed.

In United States Circuit Court of Appeals

Argument and submission

May 22, 1924 (May term, 1924), cause came on to be heard before Woods, Waddill, and Rose, circuit judges, and is argued by counsel and submitted.

12 In United States Circuit Court of Appeals, Fourth
Circuit

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR	} No. 2203
versus	
THE NATIONAL EXCHANGE BANK OF BALTIMORE, MARY- land, a corporation, defendant in error	

In error to the District Court of the United States for the District
of Maryland, at Baltimore

Opinion

Filed September 29, 1924

Before WOODS, WADDILL, and ROSE, Circuit Judges

A. W. W. Woodcock, U. S. Attorney, for plaintiff in error, and
G. Ridgely Sappington (Charles G. Baldwin on brief) for defend-
ant in error.

ROSE, Circuit Judge:

The parties will be designated as they were below; that is, the
United States will be called the plaintiff and the National
13 Exchange Bank of Baltimore the defendant. The District
Court sustained a demurrer to the declaration. The plaintiff
did not seek to amend, but when judgment went against it, sued out

this writ of error. The allegations of the declaration may be briefly summarized. On June 1, 1922, the plaintiff at Washington, by its duly authorized disbursing clerk, drew a Veterans' Bureau check for \$47.50 in favor of one Beck. After its delivery to him it was by some one fraudulently raised to \$4,750.00. On June 3 Beck indorsed it over to the Bank of Commerce of Spartanburg, South Carolina, and was paid \$4,750.00 for it. On the same day that bank in its turn indorsed it "Pay to the order of any bank, banker, or trust company, all prior indorsements guaranteed," and in the usual course of business negotiated it for value to the defendant, receiving \$4,750.00 for it. On the fifth of June the defendant indorsed it "Received payment through the Baltimore Clearing House, indorsements guaranteed," and in the usual course of business negotiated it for \$4,750.00 to the plaintiff's agent, the Baltimore branch of the Federal Reserve Bank of Richmond, which sent it to the Treasurer of the United States, who paid it, without noticing that it had been raised. It is not charged that demand for repayment was made upon the defendant until after it had in good faith parted with the money it received. Such a declaration, it is said (is bad, because it shows, first, that the defendant held the check for collection only, and, second, that the plaintiff, who was both drawer and drawee of the check, paid it upon presentation.

It is not claimed that defendant is liable if it was in fact acting merely as a collection agency. *National Park Bank vs. Seaboard Bank*, 114 N. Y. 28; *United States vs. American Exchange National Bank*, 70 Fed. 232; *Wells, Fargo & Co. vs. United States*, 45 Fed. 337; 2 *Michie on Banks and Banking*, 1497.

The plaintiff, however, denies defendant's contention that
14 the indorsement put on by the Bank of Commerce "Pay to the order of any bank, banker, or trust company," shows that the defendant was nothing more than an agent to collect. The defendant relies upon such cases as *Bank of Indian Territory vs. First National Bank*, 109 Missouri Appeals, 665; *Lippett vs. Thomas Loan & Trust Company*, 88 Conn. 185; *Citizens Trust Co. vs. Ward*, 195 Missouri Appeals, 223; *National Bank of Rolla vs. National Bank of Salem*, 141 Missouri Appeals, 719. The plaintiff answers that since the enactment of the uniform negotiable instruments act, if not before, such an indorsement is not restrictive but on the contrary made the defendant a holder in due course and cites *Interstate Trust Co. vs. United States National Bank*, 67 Colorado 6, and *National Bank of Commerce vs. Bossemeyer*, 101 Nebraska 96. It furthermore argues that no matter what significance might at any time or anywhere have been given to such an indorsement, when unexplained it was always permissible to show that the indorsee who took under it was in fact the real owner of the check, and that it says it tendered itself ready to do by alleging in its declaration that the South Carolina bank "negotiated the said check for value in the usual course of business to and received from the defendant

the sum of \$4,750." We do not find it necessary to pass upon these interesting questions, as well of substantive law as of pleading, because in our view the plaintiff, having been both the drawer and the drawee of the check, may not, in the absence of special circumstances not here existing, recover back the money it has paid to a holder for value not chargeable with negligence or bad faith. *Bank of the United States vs. Bank of Georgia*, 10 Wheaton 33.

It is of course clear that the plaintiff could not recover from such a defendant what it had paid upon a check to which there had been forged the signature of one of its officials empowered to sign for it.

United States vs. Chase National Bank, 215 U. S. 485; *Gloucester Bank vs. Salem Bank*, 17 Mass. 41; *Cooke vs. United States*, 91 U. S. 389; *United States vs. Bank of New York*, 219 Fed. 248. It is nothing to the point that one who pays his genuine check upon which there has been forged the indorsement of the payee or of some intermediate holder in due course may in the absence of negligence or estoppel compel repayment by him to whom he paid no matter how innocent of carelessness or wrongdoing the recipient may have been. *United States vs. National Exchange Bank*, 114 U. S. 302.

Nor does it help plaintiff that prior to the almost universal adoption of the uniform negotiable instruments act the general rule in this country was that when a check or draft had been fraudulently altered after issue and had been paid by the drawee in accordance with its altered tenor, the latter, if he were not also the drawer of the instrument, could recover from him to whom payment had been made, although the last named might have paid full value for it and was not chargeable with any fault either of omission or of commission. *White vs. Continental National Bank*, 64 N. Y. 316.

In the instant case the plaintiff was both drawer and drawee, and therefore it is not necessary for us to inquire whether section 62 of the negotiable instrument act has changed the law applied in the case last cited, as Professors Ames and Brannon believe and as Judge Fitzhenry has held. *Brannon on The Negotiable Instruments Act*, ed. 25; *American Hominy Co. vs. Milliken National Bank*, 273 Fed. 550.

Plaintiff is doubtless correct in contending that the Supreme Court and other American tribunals, State and Federal, have not carried to its logical conclusion all that Lord Mansfield said in *Price vs. Neal*, 3 Burr. 1355. They have not been willing to hold that in no case can an innocent party who pays forged or altered negotiable paper recover from the equally innocent individual to whom such payment has been made. In some cases they have declined to say that where neither party is to blame, the law will leave them as it finds them. For the instant purpose it is enough that the highest court of the land has expressly applied to a case such as that now before us that part of his opinion in which he said "It is incumbent upon the plaintiff to be satisfied that the bill drawn upon him was the drawer's own before he accepted or paid it."

Bank of the United States vs. Bank of Georgia (*supra*). Many years later the same court reaffirmed its view that one who accepts and pays forged paper purporting to be his own and pays it to a holder for value can not recall the payment. It went on to explain "The operative effect of this rule is the acceptance or, more properly perhaps, the adoption of the paper as genuine by its apparent maker. Often the bare receipt of a paper accompanied by payment is equivalent to the adoption within the meaning of the rule because as every man is presumed to know his own signature and ought to detect its forgery by simple inspection, the examination which he can give when the demand upon him is made is all the law considers necessary to his protection. He must repudiate so soon as he has discovered the forgery, otherwise he will be regarded as accepting the paper. Unnecessary delay under such circumstances is unreasonable and unreasonable delay is negligence which throws the burden of the loss upon him who is guilty of it rather than upon one who is not." *Cook vs. United States*, 91 U. S. 389.

It has been already pointed out that where the drawer and the drawee are one the cases make no distinction between a forged and a raised instrument.

There is, it is true, much force in the plaintiff's argument that there is little ground to impute negligence to it merely because one of its thousands of clerks accepted at its apparent face a check originally drawn by another for a hundredth part of the sum. The number of the transactions in which it is compelled to engage
17 and the army of employees through whom it must act are illustrated by the fact that the check in controversy bore the numbers 48,218,587. It asks, is it reasonable to suppose that every one of those whom it charges with the duty of paying its obligations can know the amount for which each of them was in the first instance drawn? It is not for us to say whether the business of making such payments can be so organized, distributed, and safeguarded as to insure that he who pays may surely and swiftly ascertain for what sum the check or draft was issued. It is enough that when the United States elects to become a party to commercial paper, it assumes all the responsibilities of private persons under the same circumstances. *Cook vs. United States* (*supra*); *United States vs. Bank of New York National Banking Association*, 219 Fed. 648. If the burden becomes too heavy, Congress can give relief. It may subject some or all classes of what would otherwise be negotiable paper when issued by the Government to statutory restrictions such as those imposed upon money orders. *Bolognesi vs. United States*, 189 Fed. 335; *United States vs. Bank of New York, National Banking Association* (*supra*). Such action might entail much inconvenience upon the citizens and embarrass the operations of the Government itself, precisely as limitations upon the free negotiability of ordinary paper issued by private individuals might clog the arteries of trade. It is for Congress to choose.

Affirmed.

18 In United States Circuit Court of Appeals

[Title omitted.]

Judgment

Filed September 29, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Maryland, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

September 29, 1924.

JOHN C. ROSE,
U. S. Circuit Judge.

19 On another day, to wit, October 30, 1924, the mandate of this court in this cause is issued and transmitted to the U. S. District Court at Baltimore, Maryland, in due form.

Same day, the original petition for writ of error and order allowing writ of error are returned to the clerk of the District Court at Baltimore, Maryland.

In United States Circuit Court of Appeals

Petition for writ of error

Filed December 1, 1924

The United States of America, plaintiff in error in the above-entitled cause, respectfully, shows:

1. That this is a suit of a civil nature at common law brought by the United States in the District Court for the District of Maryland on March 23, 1923.

2. That the amount in controversy is the sum of \$4,702.50, with interest from June 5, 1922, and represents the difference between the sum of \$4,750.00, the amount paid the defendant in error by the plaintiff in error upon a certain check which had been issued by an officer of the plaintiff in error for \$47.50, and which had been fraudulently raised before presentation.

20 3. That the District Court of the United States for the District of Maryland, in which the plaintiff in error instituted this suit against the defendant in error, rendered a judgment against the plaintiff in error, and in favor of the defendant in error, on the third day of December, 1923; that thereupon, on the same day, the plaintiff sued out a writ of error to this court; and that this court on September 29, 1924, affirmed the judgment rendered

in the District Court of the United States for the District of Maryland.

4. That the said judgment is one in which the decision of the Circuit Court of Appeals is not made final by the laws of the United States, and the plaintiff in error, the United States of America, desires to have the decision in this case reviewed by the Supreme Court of the United States because of the errors more particularly assigned and pointed out in the assignment of errors presented and filed with this petition, to which reference is hereby made.

Wherefore, the United States of America respectfully prays that
a writ of error be allowed to it in the above-entitled cause,
21 directing the clerk of the United States Circuit Court of
Appeals for the Fourth Judicial Circuit to send the records
and proceedings in this case, with all things concerning the same,
to the Supreme Court of the United States, in order that the errors
complained of in the assignment of errors, herewith filed by the
plaintiff in error, may be reviewed, and if error be found, corrected
according to the laws and customs of the United States.

And your orator, the United States of America, will ever pray, etc.

UNITED STATES OF AMERICA,

By A. W. W. WOODCOCK,

United States Attorney.

In United States Circuit Court of Appeals

Assignment of errors

Filed December 1, 1924

Now comes the United States of America, the plaintiff in the above-entitled cause, for the purpose of making application for a writ of error to the Supreme Court of the United States, and files the following assignment of errors in the opinion and judgment of the United States Circuit Court of Appeals for the Fourth Judicial

Circuit, delivered and entered on the twenty-ninth day of
22 September, 1924, upon which assignment of errors it expects
to rely in the prosecution of a writ of error to the Supreme
Court of the United States in the above-entitled cause.

1. That the Circuit Court of Appeals erred in affirming the ruling of the District Court of the United States for the District of Maryland in sustaining the demurrer filed by the defendant on the twenty-eighth day of April, 1923, to the declaration of the plaintiff.

2. That the Circuit Court of Appeals erred in affirming the judgment entered by the District Court of the United States for the District of Maryland against the plaintiff and in favor of the defendant.

Because of the said errors the plaintiff, the United States of America, prays that the order and judgment of the Circuit Court of Appeals for the Fourth Judicial Circuit and of the District Court

of the United States for the District of Maryland, entered herein on the twenty-ninth day of September, 1924, may be reviewed by the Supreme Court of the United States and reversed.

UNITED STATES OF AMERICA,
By A. W. W. WOODCOCK,
United States Attorney.

23

In United States Circuit Court of Appeals

Order allowing writ of error

Filed December 1, 1924

The foregoing petition is granted and a writ of error allowed, as prayed for.

It is further ordered that the record to be transmitted in this case shall be the same as the record upon which this case was heard in the Circuit Court of Appeals for the Fourth Judicial Circuit, together with a transcript of all proceedings had and taken in the said case in the said Circuit Court of Appeals and subsequent thereto, including the opinion of the said Circuit Court of Appeals. The clerk of the said Circuit Court of Appeals shall transmit to the clerk of the Supreme Court of the United States a transcript of the record made up as above stated.

Richmond, Va., December 1, 1924.

JOHN C. ROSE,
*Judge of the United States Circuit Court
of Appeals for the Fourth Circuit.*

x United States Circuit Court of Appeals

Writ of error

Filed December 4, 1924

In United States Circuit Court of Appeals

*The President of the United States, to the Honorable the Judges of
the United States Circuit Court of Appeals for the Fourth Cir-
cuit, greeting:*

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between the United States of America, plaintiff in error, and the National Exchange Bank of Baltimore, Maryland, a corporation, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and fully and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, this fourth day of December, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.]

CLAUDE M. DEAN,
*Clerk of the United States Circuit Court
of Appeals for the Fourth Circuit.*

Allowed by:

JOHN C. ROSE,
U. S. Circuit Judge.

25-26 In United States Circuit Court of Appeals

Certificate of lodgment

The foregoing writ of error is served by lodging a copy thereof for the adverse party, on the fourth day of December, 1924, in the clerk's office of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, where the record remains.

Attest:

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

[Omitted in printing.]

27 In United States Circuit Court of Appeals

Clerk's certificate

UNITED STATES OF AMERICA,

Fourth Circuit, ss:

I, Claude M. Dean, clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein-entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 6th day of December, A. D. 1924.

[SEAL.]

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

In the Supreme Court of the United States

Stipulation to correct record

Filed December 20, 1924

It is hereby stipulated by counsel for the parties to the above-entitled cause that the word "defendant" on page 5, paragraph 5, line 6, of the transcript of the record herein is incorrect and should be "plaintiff," so that the line shall read "that the plaintiff paid the said check upon presentation."

JAMES M. BECK,
Solicitor General.

G. RIDGELY SAPPINGTON,
Counsel for Defendants in Error.

December, 1924.

[File indorsement omitted.]

[Indorsement on cover:] File No. 30,731. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 766. The United States of America, plaintiff in error, vs. The National Exchange Bank of Baltimore, Maryland. Filed December 11th, 1924. File No. 30,731.

